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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/444,083    11/22/99    FLETCHER

A    11.712

EXAMINER
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QM12/0306

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STEPHENS, J	
ART UNIT	PAPER NUMBER

3761  
DATE MAILED:

*6*

03/06/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/444,083

Applicant(s)

FLETCHER ET AL.

Examiner

Jacqueline Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4&5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☒ Other: *Action Summary*.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 9, 14, 20, 21, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the transverse distance" in lines 20 and 21 .

Claim 9 recites the limitation "the distance between the waist opening" in line 4.

Claim 14 recites the limitation "the transverse distance" in lines 24 and 25.

Claim 20 recites the limitations "the pant configuration " in line 1 and "the distance between the waist opening" in line 4.

Claim 21 recites the limitation "the width of the elastomeric side panels " in lines 2 and 3.

Claim 29 recites the limitations "the absorbent article " in lines 25, 32, and 38, and "the distance between the waist opening" in line 48.

There is insufficient antecedent basis for these limitations in the claims. Correction is required.

3. Claim 2, 4, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "each side panel" in line 1. The applicant refers to various side panels in claim 2 prior to this limitation. The examiner is uncertain which side panels are intended.

Claim 4 recites the limitation "the fastening components" in line 2. The applicant refers to various fastening components in independent claim 1 prior to this limitation. The examiner is uncertain which fastening components are intended.

Claim 6 recites the limitation "the side panels" in line 2. The applicant refers to various side panels in claim 2 prior to this limitation. The examiner is uncertain which side panels are intended.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites the limitation "longitudinally innermost parts" in lines 3 and 4. The examiner is uncertain which elements the applicant is referencing.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 and 14-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanzer et al. USPN 5782819. Tanzer discloses an absorbent article with elasticized elements and mechanical fasteners.

In reference to claims 1, 3, 10, 14, 15, 16, and 21 as best understood by the examiner, Tanzer discloses an absorbent article 20 with a longitudinal axis 102, a transverse axis 100, and front and back waist edges (examiner has designated as F

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and B, respectively; see Figure 1) parallel to the transverse axis. The invention of Tanzer includes opposite side edges 110 extending between the front and back waist edges, a front waist region 38 contiguous with the front waist edge, a back waist region 40 contiguous with the back waist edge, and a crotch region 42 which extends between and interconnects the front and back waist regions (Figure 1).

The front waist region 38 defines a pair of transversely opposed front side panels 118. A front center panel (examiner designated as C, Figure 1) is positioned between and interconnecting the front side panels. The back waist region 40 defines a pair of transversely opposed back side panels 116. A back center panel (examiner designated as C', Figure 1) is positioned between and interconnecting the back side panels.

As shown in Figure 2, the waist flap member 120 overlies side panels 116. Waist flap member 120 is elastomeric along cross-direction 88 (col. 20 lines 60-64). Waist flap member 120 can be located at both waistband sections(col. 20 lines 60-62) which includes side panel 118. Therefore, side panels 116 and 118 are elastomeric in a direction parallel to the transverse axis 100. The article can additionally include side panels 90 which can extend from the front or rear waist regions(col. 12, lines 48-52). Side panels 90 are elastomeric in a direction generally parallel to the transverse axis(col. 13, lines 5-9). The side panels 90 each have a distal edge and an interior portion between the distal edge and the composite structure.

The absorbent article 20 includes a bodyside liner 24, an outer cover 22 bonded to the bodyside liner, and an absorbent assembly 26 disposed between the bodyside liner and the outer cover(col. 3, line 30-36). The absorbent article 20 includes a

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fastening system (col. 11, line 63- col. 12, line 20) for releasably securing the absorbent article in a pant-like configuration(Figure 8A).

The fastening system comprises first and second fastening components 80 disposed on the back side panels abutting the back waist edge(col. 11:63-67 through col. 12:1-20). The fastening components 80 are adapted to releasably engage first and second mating components 46. Fastening components 46 are attached to support members 44 which are disposed on the front side panels abutting the front waist edge (col. 11:63-67 through col. 12:1-20). In one embodiment of the '819 invention, the fastening components can be located at either or both waistbands in the side regions 90/116/118(col. 12, lines 15-17). The transverse distance of side regions 116 and 118 are substantially equal, therefore, the transverse distance of any fastening components disposed on these regions would also be substantially equal.

In reference to claims 2, 4, and 5, as best understood by the examiner, the side panels 116 and 118 form part of the waist end edges parallel to the transverse axis (F and B, Figure 1) and opposite leg end edges (examiner designated L and L'). Elastic members 34 may extend the entire length of the diaper along the lateral sides 110(col. 10, line 11, 30) which includes the regions 110, 116, 118 and 42 renders these regions elastomeric. The elastic leg members may be inwardly bowed toward the longitudinal center line(col. 10, lines 65-67) which includes the lateral region between the fastening component and the absorbent assembly 26. The elastic leg members 34, as shown in Figure 1, may have terminal points longitudinally adjacent to the front and back side panels.

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In reference to claims 6 and 18 as best understood by the examiner, the proportions of the side panels (116/118-Figure 1 and 124/126 – Figure 8) to the overall length dimension is about 27% which is included in the range of about 20% or greater. The applicant is directed to MPEP 2125 on the use of drawings as prior art.

With regard to claims 7, 8 and 19 the absorbent article has an inner surface 66 and opposite outer surface 68. The fastening components comprise loop type fasteners 80 and mating hook fastening components 46. The hook components 46 can be positioned on the outer surface (col. 15:65-67; col. 16:1-7) and the loop material can be located on tab fasteners 44 (col. 12 lines 13-18) which are inboard of the side of the rear waistband(Fig 1). The loop fasteners 80 are inherently larger than mating hooks 46 so as to allow the hooks to be engaged with the loops.

With respect to claims 9 and 20, as best understood by the examiner, Tanzer discloses a pant configuration as claimed(Figure 8A) where the refastenable seams cover 100% of the distance between the waist opening and leg openings which reads on the claimed range of about 90-98%.

In reference to claims 11,12, 22, 23, and 24 the first and second fastening components or the mating fastening components may alternately be attached to tab fastener 44 edge(col. 12:10-14). Tab fastener 44 has a length (examiner designated as TL) that is parallel to the longitudinal axis 102. Tab fastener 44 has a width dimension

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(examiner designated as TW) and the length-to-width ratio is about 3.25 which reads on the claimed range of about 2 or greater.

In reference to claim 17, the front side panels of diaper 20a(Figure 8) are longitudinally spaced from the back side panels.

With regard to claims 25-28, Tanzer discloses a refastenable pant 20a as claimed having a pair of elastomeric, nonwoven front and back side panels 124 and 126, respectively(Figure 8A). The pant 20A includes refastenable seams, elastomeric leg members adjacent the side panels and encircling each leg opening, and elastomeric front and back waistbands(col. 25, lines 4-5).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to



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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 13 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer in view of Cooper USPN 5087253. Tanzer discloses all that is claimed in the present invention except Tanzer does not provide fastening components with a length-to-width ration of 5 or greater. Cooper teaches a combination diaper/training pant with hook and loop fasteners disposed on the longitudinal sides of the diaper to hold the diaper tightly in place (col. 6, line 62). The fasteners of Cooper are positioned as shown in Figure 4 of '253 and have a length-to-width ration of about 7.5, which includes the range of about 5 or greater. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diaper of Tanzer with fasteners such as disclosed by Cooper in order to sufficiently hold the diaper on the user.

With respect to claim 29, the Cooper invention has a graphic disposed on the outer cover. Cooper teaches the use of graphics to personalize the absorbent structures (col. 3 lines 16-18). It would have been obvious to one of ordinary skill in the art to incorporate decorative indicia on the outer cover to render the article more pleasing to the user.

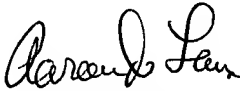
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703)308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703)308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Jacqueline F Stephens  
Examiner  
Art Unit 3761

  
Aaron J. Lewis  
Primary Examiner

February 23, 2001